

### **REMARKS**

Claims 1-8, 16, and 18-23 are pending. Claims 9-15 and 17 have been cancelled. Claims 1 and 6 have been amended. Support for the amendments can be found in the specification and originally filed claims. Therefore, no new matter has been added. Favorable consideration of the currently pending claims is respectfully requested in light of the foregoing amendments and following remarks.

#### ***Double Patenting:***

The Examiner has indicated that if Claim 3 is found allowable then Claim 17 would be objected to under 37 C.F.R. § 1.75 as being a substantial duplicate thereof. Accordingly, Applicant has canceled Claim 17 and submits that such an objection will not be necessary.

#### ***Rejections Under 35 U.S.C. § 102***

In the Office Action, the Examiner rejected Claims 1 and 16 under 35 U.S.C. § 102(b) as being anticipated by Rohr (U.S. Patent No. 5,445,971). Applicant respectfully submits that the foregoing amendments and following remarks overcome the rejection.

Claim 1 has been amended to remove the phrase “or moves” and now recites “a magnetically attractive material **affixed** at one or more locations upon the test strip such that the **test strip** adopts a specific **spatial orientation or alignment** when exposed to a magnetic field” (emphasis added). Applicant respectfully submits that Rohr fails to disclose or suggest these limitations. Specifically, Rohr fails to disclose that a **test strip** adopts a specific **spatial orientation or alignment** when exposed to a magnetic field.

Rohr discloses “a method for determining the presence or amount of analyte in a test sample using a detectable label attached to a binding member” (col. 1, lines 13-15). The method comprises “contacting a test sample with a solid-phase reagent and a magnetically-labeled reagent. The solid-phase reagent comprises a first binding member

attached to a solid phrase [sic - phase], and the magnetically-labeled reagent comprises a second binding member attached to a magnetically-attractable label.” (col. 2, lines 61-66) Rohr thus discloses two distinct components: a **solid-phase reagent/first binding member** and a **magnetically-labeled reagent/second binding member**. Rohr discloses that the “solid phase material”—i.e., the solid-phase reagent/first binding member—can be a “glass fiber test strip” (col. 14, lines 12-17). It is the **magnetically-labeled reagent**, however, that reacts to a magnetic field, and **not the solid-phase reagent**. (see, e.g., col. 19, lines 59-68). In fact, Rohr discloses that the solid-phase reagent/material—the material that can include a test strip—should be either nonmagnetic, or, if it is magnetic, it should be positioned in such a manner “where it is not affected by a magnetic field.” (col. 14, lines 49-55) Thus, Rohr explicitly teaches away from using a test strip that “adopts a specific spatial orientation or alignment when exposed to a magnetic field” as presently claimed in Claim 1 as amended.

Moreover, even if the Examiner were to maintain that the “test strip” (solid-phase material) of Rohr would move in the presence of a magnetic field, applicant submits that the test strip of Rohr would not “adopt a specific spatial orientation or alignment” according to Claim 1 as amended. At best, Rohr discloses that a magnetic field imparts a force on the magnetically-labeled reagent, which causes “displacement or distortion” of a bendable material onto which the magnetically-labeled reagent is placed.” (col. 19, lines 61-64) Such a “displacement or distortion” fails to satisfy the “specific spatial orientation or alignment” limitation of Claim 1, and Rohr fails to disclose or suggest any such spatial orientation or alignment of one or more test strips.

In view of the substantial differences between the present application and Rohr, applicant respectfully submits that Claim 1 is novel and non-obvious and requests that the rejection of Claim 1 under 35 U.S.C. § 102(b) in view of Rohr be withdrawn.

Claim 16 includes all of the limitations of Claim 1. Therefore, because applicant submits that Claim 1 is patentable over Rohr, Claim 16 is also believed to be

allowable, and applicant requests that the rejection of Claim 16 under 35 U.S.C. § 102(b) be withdrawn.

The Examiner rejected Claims 1-3, 16 and 17 under 35 U.S.C. § 102(e) as anticipated by Hagen *et al.* (U.S. Patent No. 6,872,358) (hereinafter “Hagen”). Applicant respectfully submits that the amendments to the claims overcome the rejection.

As mentioned above, Claim 1 has been amended to remove the phrase “moves or” and now explicitly recites that “the test strip adopts a specific spatial orientation or alignment when exposed to a magnetic field.”

As discussed in the Amendment and Response filed August 8, 2006, Hagen discloses a test strip dispenser in which the test strips are “moved” by magnet means. Hagen simply discloses, however, that a magnet is used to dispense test strips, and does not disclose or suggest that the magnet causes test strips to “adopt a specific spatial orientation or alignment” as claimed in amended Claim 1.

Accordingly, Claim 1 is novel and non-obvious over Hagen, and applicant requests that the rejection of Claim 1 under 35 U.S.C. § 102(e) in view of Hagen be withdrawn.

Claims 2, 3, and 16 depend, directly or indirectly, from amended Claim 1 or contain all the limitations thereof. Claim 17 has been cancelled. For at least the foregoing, applicant respectfully submits that Claims 2, 3, and 16 are patentable over Hagen and requests that the rejection of these claims be withdrawn.

### ***Rejections Under 35 U.S.C. § 103***

In the Office Action, the Examiner rejected Claims 4 and 5 under 35 U.S.C. § 103(a) as being obvious over Hagen in view of Hegedus (U.S. Patent No. 3,384,093). Claims 4 and 5 depend from Claim 16, which contains all the limitations of amended Claim 1. Moreover, Hegedus fails to cure the deficiencies of the references discussed above.

Accordingly, because Claim 16 and amended Claim 1 are believed to be allowable over the prior art of record, Claims 4 and 5 are also believed to be allowable, and applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, the Examiner rejected Claim 18 under 35 U.S.C. § 103(a) as being obvious over Hagen in view of Caladine (GB 2 170 780 A1). Claim 18 contains all the limitations of amended Claim 1. Moreover, Caladine fails to cure the deficiencies of the references discussed above. Accordingly, because Claim 1 is believed to be allowable over the prior art of record, Claim 18 is also believed to be allowable, and applicant respectfully requests that the rejection of this claim under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, the Examiner rejected Claims 19 and 20 under 35 U.S.C. § 103(a) as being obvious over Hagen in view of Caladine as applied to Claim 18 above, and further in view of Nambu (U.S. Patent No. 5,444,749). Claims 19 and 20 depend from Claim 18, which contain all the limitations of amended Claim 1. Moreover, Nambu fails to cure the deficiencies of the references discussed above. Accordingly, because Claim 18 and amended Claim 1 are believed to be allowable over the prior art of record, Claims 19 and 20 are also believed to be allowable, and applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, the Examiner rejected Claims 1, 6-8, 16 and 18 under 35 U.S.C. § 103(a) as being obvious over van Rijckevorsel et al. (U.S. Patent No. 4,578,716) (hereinafter “van Rijckevorsel”) in view of Casner (U.S. Patent No. 3,623,603).

Applicant submits that independent Claims 1 and 6, as amended, are non-obvious and patentable over the combination of van Rijckevorsel and Casner. Claims 1 and 6, as amended, recite that a test strip comprising a magnetically attractive material “adopts a

specific spatial orientation or alignment” when exposed to or in response to a magnetic field. Even if, arguendo, the combination of van Rijckevorsel and Casner suggests marking test strips with magnetic labels and using a magnetic field to sort them as argued by the Examiner, neither of these references, alone or in combination, discloses or suggests using a magnetic field to cause one or more test strips to adopt “a specific spatial orientation or alignment” according to amended Claims 1 and 6. At best, the van Rijckevorsel and Casner combination suggested by the Examiner would suggest using a magnetic field to “move” test strips for sorting purposes—such “movement” does not satisfy the explicit “spatial orientation or alignment” limitations of Claims 1 and 6.

Accordingly, independent Claims 1 and 6 are deemed novel and non-obvious over the combination of van Rijckevorsel and Casner, and applicant requests that the rejection of Claims 1 and 6 under 35 U.S.C. § 103(a) be withdrawn.

Claims 7, 8, 16 and 18 depend, either directly or indirectly, or contain all the limitations of Claims 1 or 6. Accordingly, because Claims 1 and 6 are believed to be allowable, Claims 7, 8, 16 and 18 are also believed to be allowable, and applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, the Examiner rejected Claim 21 under 35 U.S.C. § 103(a) as being obvious over van Rijckevorsel in view of Casner as applied to Claims 1, 6-8, 16 and 18 above, and further in view of Werderitch et al. (U.S. Patent No. 4,387,064) (hereinafter “Werderitch”). Claim 21 depends from Claim 6 and includes all of the limitations thereof. Moreover, Werderitch fails to cure the deficiencies of the references discussed above. Accordingly, because Claim 6 is believed to be allowable over the prior art of record, Claim 21 is also believed to be allowable, and applicant respectfully requests that the rejection of this claim under 35 U.S.C. § 103(a) be withdrawn.

In the Office Action, the Examiner rejected Claims 22 and 23 under 35 U.S.C. § 103(a) as being obvious over van Rijckevorsel in view of Casner and Werderitch as applied to Claims 21 above, and further in view of Bonnet (U.S. Patent No. 5,896,999). Claims 22 and 23 depend from Claim 21, which depends from Claim 6 and includes all of the limitations thereof. Moreover, Bonnet fails to cure the deficiencies of the references discussed above. Accordingly, because Claims 21 and 6 are believed to be allowable over the prior art of record, Claims 22 and 23 are also believed to be allowable, and applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

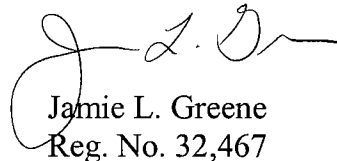
**CONCLUSION**

Based upon the amendments and remarks provided above, applicant believes that Claims 1-8, 16 and 18-23 are in condition for allowance. A Notice of Allowance is therefore respectfully solicited.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 11-0855.

If the Examiner believes any informalities remain in the application that may be corrected by Examiner's Amendment, or there are any other issues that can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 815-6500 is respectfully solicited.

Respectfully submitted,

  
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